

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Jane Doe 202a,)	Case No 2:16-cv-00530-RMG
)	
Plaintiff,)	
)	
v.)	ORDER AND OPINION
Al Cannon, Sheriff of Charleston County,)	
individually and in his official capacity,)	
et al.,)	
)	
Defendants.)	
)	

I. Background

Plaintiff, through counsel, brought this action for violations of her constitutional rights and under state law against Al Cannon, Sheriff of Charleston County; several deputy sheriffs and employees of the sheriff; and Sandra J. Senn and Senn Legal, LLC. Before the Court is Plaintiff's Motion for Partial Summary Judgment as to Liability Against Defendants Farmer, Dyer, and Fickett for Three Events filed on June 8, 2016. (Dkt. No. 29; *see also* Dkt. No. 30.) Defendants filed a Response in Opposition on July 18, 2016, and Plaintiff filed a reply on July 28, 2016. (Dkt. Nos. 44, 45.) This matter is before the Court on the Report and Recommendation ("R. & R.") of the Magistrate Judge recommending that the Court Deny Plaintiff's partial motion for summary judgment. (Dkt. No. 60.) Plaintiff filed objections to the R. & R., and Defendants filed a reply. (Dkt. Nos. 70, 73.) This Court **denies** Plaintiff's partial motion for summary judgment because the motion is premature. The Court adopts only the "Relevant Alleged Facts" and the Prematurity analysis from the R. & R. (Dkt. No. 60 at 1-2, 10-11.)

II. Facts

The Court adopts the “Relevant Alleged Facts” as outlined in the R. & R. (Dkt. No. 60 at 1-2.)

III. Legal Standard for Summary Judgment

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment “shall” be granted “if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “Facts are ‘material’ when they might affect the outcome of the case, and a ‘genuine issue’ exists when the evidence would allow a reasonable jury to return a verdict for the nonmoving party.” *The News & Observer Publ'g Co. v. Raleigh-Durham Airport Auth.*, 597 F.3d 570, 576 (4th Cir. 2010) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

IV. The Motion for Summary Judgment is Premature

Plaintiff has moved for partial summary judgment on liability for three events:

- (a) against Defendant Fickett for excessive force, based on her Taser use against the Plaintiff while the plaintiff was already entirely restrained other than her right arm,
- (b) against Deputies Farmer, Dyer, and Fickett for each of (a) their refusal to permit the Plaintiff her Constitutional right of access to counsel, as required by Detention Center policy and (b) their admitted punishment of the Plaintiff based on her request to have access to counsel consistent with Detention Center policy, and
- (c) against Defendant Fickett for excessive force for strangling the Plaintiff without provocation or necessity.

(Dkt. No. 29 at 1-2.)


For the reasons outlined in the R. & R., Plaintiff’s motion for partial summary judgment is premature. (Dkt. No. 60 at 10-11.) Plaintiff filed her Motion for Summary Judgment on June

8, 2016, eight (8) days after the Defendants against whom summary judgment is sought filed their Answer. Discovery has not begun in this case as the Court has not issued a scheduling order. *See* Fed. R. Civ. P. 26(d)(1). In ruling on Defendants' motion to dismiss and motion for judgment on the pleadings, this Court has granted Plaintiff leave to amend the Complaint, yet another reason why summary judgment is premature. (Dkt. Nos. 8, 46.) Plaintiff argues that the motion is properly before the court and that the Defendants did not sufficiently identify what evidence they need through discovery (Dkt. No. 45.), but Defendants' Response in Opposition does substantively respond to the Plaintiff's Motion after arguing that the motion is premature. (Dkt. No. 45 at 5-22.) Summary judgment on the issues at bar is premature at this stage given the intensively factual nature of the inquiries.

V. Conclusion

Plaintiff's motion for summary judgment is therefore **DENIED**.

AND IT IS SO ORDERED.


Richard Mark Gergel
United States District Court Judge

February 15, 2017
Charleston, South Carolina